



U.S. Citizenship
and Immigration
Services

(b)(6)

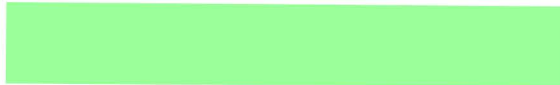


DATE: **AUG 15 2013**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

The petitioner must appeal an unfavorable decision within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Immigration and Nationality Act nor the regulations grant the AAO authority to extend this time limit.

The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The director issued the decision denying the petition on May 15, 2013. The director properly gave notice to the petitioner that it had 33 days to file the appeal. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on June 20, 2013, or 36 days after the decision was issued. Accordingly, the appeal is untimely.¹

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Nebraska Service Center. 8 C.F.R. § 103.5(a)(1)(ii).

It appears that the director did not review the untimely appeal to determine whether it meets the requirements of a motion to reopen or reconsider. Therefore, the matter will be returned to the director. If the director determines that the untimely appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued. If the director determines that the untimely appeal does not meet the requirements of a motion, no new decision will be issued.

¹ The record contains a cover letter from counsel for the petitioner, dated June 19, 2013, stating that the filing fee was inadvertently left out of the package when the Form I-290B was filed. As noted above, to be properly filed, the Form I-290B must be submitted with the correct fee. 8 C.F.R. § 103.2(a)(7)(i).

The untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).²

ORDER: The appeal is rejected.

² Additionally, the record does not contain a properly filed Form G-28. In accordance with the USCIS regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a “new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office.” This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010). The Form I-290B was signed by an attorney; however, the Form G-28 submitted predates the director’s decision. On July 25, 2013, the AAO notified this attorney by facsimile that the record does not contain a new and properly executed Form G-28 (Rev. 2/28/13), Notice of Entry of Appearance as Attorney or Representative, signed by both the petitioner and counsel. This attorney did not submit a new duly executed Form G-28 in response. Therefore, this decision is being submitted directly to the petitioner.